

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ABORTIONS, EXCEPT TO PROTECT THE LIFE OF THE WOMAN, FOR THE PURPOSE OF POPULATION GROWTH AND CONTROL; AMENDING SECTIONS 50-20-102, 50-20-103, 50-20-109, AND 50-20-110, MCA; AND REPEALING SECTION 50-20-401, MCA."

WHEREAS, a state that can show "a compelling state interest" can, according to the U.S. Supreme Court's decision in Roe v. Wade, 410 U.S. 113 (1973), place limitations on the right to an abortion; and

WHEREAS, Montana has a compelling state interest in promoting a population with a balanced distribution of people of all ages; and

WHEREAS, the Legislature of the State of Montana believes it has a compelling state interest in increasing the birth rate over the next two decades to ensure that the state has enough people of working age to prevent a labor shortage; and

WHEREAS, the Legislature of the State of Montana has a further compelling state interest in promoting the birth of all of its posterity by banning all abortions except those in which the life of the pregnant woman would be endangered by carrying the pregnancy to term; and

WHEREAS, the Legislature of the State of Montana wishes to accomplish the goals of promoting a balanced population, increasing the state birth rate, and promoting the birth of all of the state's posterity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 50-20-102, MCA, is amended to read:

**"50-20-102. Statement of purpose -- findings.** ~~(4)~~ The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life, particularly all future generations of unborn children. It is the policy of the state to preserve and protect the lives of all human beings and to provide protection for ~~the viable~~ human life. The protection afforded to a person by Montana's constitutional right of privacy is not absolute, but may be infringed upon by a compelling state interest. The legislature finds that a compelling state interest exists in the protection of ~~viable~~ all human life.

1 including the lives of the unborn.

2 ~~(2) The legislature finds, with respect to 50-20-401, that:~~

3 ~~—— (a) the United States supreme court has determined that states have a legitimate interest in protecting~~  
 4 ~~both a woman's health and the potentiality of human life and that each interest grows and reaches a compelling~~  
 5 ~~point at various stages of a woman's approach to the full term of a pregnancy;~~

6 ~~—— (b) the court has also determined that subsequent to viability, the state in promoting its interest in the~~  
 7 ~~potentiality of human life may, if it chooses, regulate and even proscribe abortion except when necessary, in~~  
 8 ~~appropriate medical judgment, for the preservation of the life or health of the woman;~~

9 ~~—— (c) the holdings referred to in subsections (2)(a) and (2)(b) apply to unborn persons in order to extend~~  
 10 ~~to unborn persons the inalienable right to defend their lives and liberties;~~

11 ~~—— (d) absent clear proof that an abortion is necessary to save the life of the woman, the abortion of a viable~~  
 12 ~~person is an infringement of that person's rights; and~~

13 ~~—— (e) the state has a duty to protect innocent life and that duty has grown to a compelling point with respect~~  
 14 ~~to partial-birth abortion."~~

15  
 16 **Section 2.** Section 50-20-103, MCA, is amended to read:

17 **"50-20-103. Legislative intent.** It is the intent of the legislature to restrict abortion ~~to the extent~~  
 18 ~~permissible under decisions of appropriate courts or paramount legislation."~~

19  
 20 **Section 3.** Section 50-20-109, MCA, is amended to read:

21 **"50-20-109. Control of practice of abortion.** (1) ~~Except as provided in 50-20-401, an~~ An abortion may  
 22 ~~not~~ be performed within the state of Montana only:

23 (a) ~~except~~ by a licensed physician or physician assistant; and

24 (b) ~~after viability of the fetus, except as provided in subsection (2).~~

25 (b) if the life of the pregnant woman would be endangered by carrying the pregnancy to full term.

26 (2) An abortion under subsection (1)(b) may be performed only to preserve the life ~~or health~~ of the  
 27 mother and only if:

28 ~~—— (a) the judgment of the physician who is to perform the abortion is first certified in writing by the~~  
 29 ~~physician, setting forth in detail the facts relied upon in making the judgment; and~~

30 ~~—— (b) two other licensed physicians have first examined the patient and concurred in writing with the~~

1 judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician  
 2 certifies that the abortion is necessary to preserve the life of the mother.

3 (3) The timing and procedure used in performing an abortion under subsection (1)(b) must be such that  
 4 the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in  
 5 45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health  
 6 of the mother.

7 (4) ~~For purposes of this section, "health" means the prevention of a risk of substantial and irreversible~~  
 8 ~~impairment of a major bodily function.~~

9 (5)(4) The supervision agreement of a physician assistant may provide for performing abortions.

10 (6)(5) Violation of subsections (1) through (3) is a felony."  
 11

12 **Section 4.** Section 50-20-110, MCA, is amended to read:

13 **"50-20-110. Reporting of practice of abortion.** (1) ~~Every~~ Each facility in which an abortion is performed  
 14 within the state shall keep on file upon a form prescribed by the department a statement dated and certified by  
 15 the physician who performed the abortion setting forth ~~such the~~ the information with respect to the abortion ~~as that~~  
 16 the department by regulation ~~shall require~~ requires, including but not limited to information on prior pregnancies,  
 17 the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the  
 18 fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life  
 19 and health of the fetus.

20 (2) The physician performing an abortion shall ~~cause such request that~~ request that pathology studies ~~to be made~~  
 21 in connection ~~therewith as~~ with the abortion that the department ~~shall require~~ requires by regulation, and the  
 22 facility shall keep the reports ~~thereof of the studies~~ on file.

23 (3) In connection with an abortion, the facility shall keep on file the original of each of the documents  
 24 required by this chapter relating to informed consent, consent to abortion, ~~certification of necessity of abortion~~  
 25 ~~to preserve the life or health of the mother~~, and certification of necessity of abortion to preserve the life of the  
 26 mother.

27 (4) ~~Such~~ The facility shall, within 30 days after the abortion, file with the department a report upon a form  
 28 prescribed by the department and certified by the custodian of the records or physician in charge of ~~such the~~  
 29 facility ~~setting forth~~ containing all of the information required in subsections (1), ~~(2), and through~~ (3) of this section,  
 30 except ~~such any~~ any information ~~as that~~ as would identify any individual involved with the abortion. The report ~~shall~~ must

1 exclude copies of any documents required to be filed by subsection (3) ~~of this section~~, but ~~shall~~ must certify that  
2 ~~such the~~ documents were duly executed and are on file.

3 (5) All reports and documents required by this chapter ~~shall~~ must be treated with the confidentiality  
4 afforded to medical records, subject to ~~such~~ disclosure ~~as is~~ permitted by law. Statistical data not identifying any  
5 individual involved in an abortion ~~shall~~ must be made public by the department annually, and the report required  
6 by subsection (4) ~~of this section~~ to be filed with the department ~~shall~~ must be available for public inspection  
7 except ~~insofar as to the degree that~~ it identifies any individual involved in an abortion. Names and identities of  
8 persons submitting to an abortion ~~shall~~ must remain confidential among medical and medical support personnel  
9 directly involved in the abortion and among persons working in the facility where the abortion was performed  
10 whose duties include billing the patient or submitting claims to an insurance company, keeping facility records,  
11 or processing abortion data required by state law.

12 (6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212."  
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14 NEW SECTION. **Section 5. Repealer.** Section 50-20-401, MCA, is repealed.  
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